

Remarks

Claims 38-61 and 65-74 are pending in the application.

Rejections Under 35 U.S.C. § 103

Claims 38-45, 47, and 65-67 were rejected under 35 U.S.C. § 103(a) as obvious over Australian Patent No. AU-B-32375/97 to Jabara et al. (hereinafter “Jabara”). Claims 38-62 and 65-74 were rejected under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 3,824,322 to Fiorella (hereinafter “Fiorella”) and further in view of Braverman, J.B.S., Citrus Products, 105-11 (Interscience Publishers, Inc., New York, 1949) (hereinafter “Braverman”). The rejections are respectfully traversed.

Jabara

Jabara discloses an “edible composition compris[ing] between 0.5 and 80.0 wt% binder and between 0.5 and 99.5 wt% flavour.” (Page 7, Lines 15-18). Nothing in Jabara remotely teaches or suggests a coated article for imparting flavor comprising a food grade composition that includes about 40 to 100 weight percent food grade acid, 0 to about 5 weight percent surface tension reducing agent, 0 to about 30 weight percent plasticizer, 0 to about 20 weight percent bulk agent, and 0 to about 30 weight percent water that is coated and immobilized onto a surface of a drinking straw. Jabara neither discloses nor suggests that a composition having a high acid concentration may be immobilized upon the surface of a drinking straw. Instead, Jabara requires between 0.5 and 80.0 wt% **binder** in order to adhere the composition to the drinking straw. The present invention requires no binder and instead can **self-adhere** to the surface of the drinking straw absent an adhesive agent. To create a composition of the present application would require inventive effort beyond that of a skilled flavorist desiring to create a beverage with a sour taste.

Fiorella, further in view of Braverman

The Examiner maintains that because the text at column 1, lines 56-69 of Fiorella refers to the prior art and not to the Fiorella invention, it does not teach away from flavor coated drinking straws. Applicants respectfully disagree and maintain that Fiorella **does teach away** from flavor coated drinking straws *precisely because Fiorella distinguishes itself as superior to the drinking straw prior art* discussed at column 1, lines 56-69. Fiorella discloses a flavored *drink stirrer* for alcoholic beverages, but teaches away from flavor coated *drinking straws*. Fiorella teaches that although flavors have been incorporated in drinking straws, they do not provide desirable properties such as maintaining the flavoring agent in a convenient position, protecting it before use, and allowing easy measured dispensing of the flavoring by the consumer. (Col. 1, Lines 56-69). One of ordinary skill in the art could not and would not read Fiorella as doing anything but teaching away from the instant claims.

The Examiner further maintains that Applicants' reference to crimping and perforations are related to the coated article and not to the composition that is in the claims. Applicants respectfully disagree, because the difficulty of holding flavoring means noted in column 3, lines 17-22 of Fiorella is a problem that is addressed by the present invention and is relevant to the acid coated article claimed. Fiorella does not contemplate or suggest a composition with the high acid concentration of the food grade acid composition of the present application, which advantageously can self-adhere to the surface of a drinking straw. Fiorella teaches that un-crimped and un-perforated hollow cylindrical tubes functionally do not hold flavoring means well. (Col. 3, Lines 17-22). In contrast, Applicants' invention addresses this problem, teaching that the "coating composition comprises a *high concentration of one or more food grade acids* and *advantageously can self-adhere* to the surface of the drinking straw absent an adhesive

agent.” Crimping and perforations are unnecessary. Accordingly, the claimed composition clearly provides a benefit not taught by Fiorella; the claimed food acid composition is clearly more than merely “adjusting the acid content of the straw according to the extent of sourness desired” as the Examiner contends. Absent improper hindsight reconstruction based on the instant application, Fiorella plainly would not have motivated one of ordinary skill in the art at the time of Applicants’ invention to derive the presently claimed food acid composition coated drinking straw.

Examiner also maintains that Fiorella contemplates a composition with the high acid content of Applicants’ claims at column 6, lines 50-56. Applicants respectfully disagree. Fiorella discloses a *flavoring* composition having a *moisture content*—not an acid content—in the range of 20 to 70 %. (Col. 6, Lines 50-56). Nothing in Fiorella remotely suggests a coating composition that comprises 40 to 100 weight percent food grade acid, 0 to 5 weight percent surface tension reducing agent, 0 to 30 weight percent plasticizer, 0 to 20 weight percent bulk agent, and 0 to 30 weight percent water. In fact, in its only example Fiorella discloses an acid content of only 0.5 to 10 %. (Col. 6, Lines 39-46). The Fiorella composition is starkly different from Applicants’ claimed composition, which comprises higher acid content than disclosed in or suggested by Fiorella. Applicants’ composition thereby offers a solution to the adherence problem recognized by Fiorella by providing self-adherent properties not disclosed in or suggested by Fiorella.

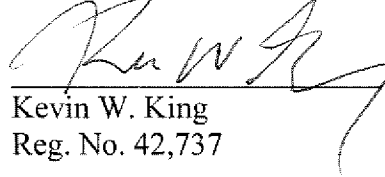
Conclusion

The claims as amended are novel and non-obvious over the prior art of record. Prompt allowance of each of claims 38-61 and 65-74 therefore is respectfully solicited.

U.S.S.N. 10/696,076
Filed: October 29, 2003
RESPONSE TO OFFICE ACTION

The undersigned respectfully invites the Examiner to contact him by telephone (404.853.8068) if any outstanding issues can be resolved by conference or examiner's amendment.

Respectfully submitted,



Kevin W. King
Reg. No. 42,737

Date: **June 18, 2007**

SUTHERLAND ASBILL & BRENNAN LLP
999 Peachtree Street NE
Atlanta, Georgia 30309-3996
(404) 853-8068
(404) 853-8806 (fax)